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The Balance, AND COLUMBIAN REPOSITORY.

"HAIL SACRED POLITY, BY FREEDOM REAR'D!
"HAIL SACRED FREEDOM, WHEN BY LAW RESTRAIN'D!"
BEATTIE.

HUDSON, (NEW-YORK) *Tuesday*, MARCH 18, 1806.

Original.

Hither the products of your closet-labors bring,
Enrich our columns, and instruct mankind.

FOR THE BALANCE.

THOSE who formed the late monſtrous combination of *Clintonians* and ſtraggling *Burrites*, having the head of a horſe and the tail of a fiſh, are likely to be wholly diſappointed in their views. The thing has cauſed ſuch a ſhock in the community, that the leaders dare not attempt, and if they did, will not be able to effect the meaſures which they contemplated. They themſelves are alarmed, as is evident from the gloſs which Cheetham is endeavoring to give to the buſineſs. Cunning always defeats itſelf in the end, and the ſtrides of ambition are often ſo great and incautious as to put every one on their guard.

It is now uncertain whether there will be the leaſt motion as to ſome removals from office which were intended, and which Cheetham early announced in his paper. The Council of Appointment carefully ſelected, and carried, becauſe no management and oppoſition were made in time, are affrighted, or their pride is roufed to think that they were choſen to be dupes, and to be made ſubſervient to the will of any man. Warped as men are by party ſpirit, and overborne by the influence of individuals, there are ſteps at which conſcience (if there be any) will heſitate: and even the hiſſings and hootings of their fellow-citizens will deter them from wanton and cruel acts.

Strange as it is to hear that Cheetham toaſted *John Swartwout*, and drank *Aaron Burr*, conſiderable allowance is to be made for his ſituation. Who ſet him up? Who ſupports him? Who directed him to promote the feaſt and to join it? Theſe queſtions will be avoided, and the true anſwers to them denied; but ſtill a degree of pity is due to a man who has heedleſsly run into a ſnare; and we cannot help exclaiming, "Alas, poor human nature!" We feel compaſſion for him who is violently thruſt forward into the front of a conteſt, and then left to ſuffer; though there is a mixture of contempt, if he be ſo mean-ſpirited as tamely to father all the miſchief.

The ground which the *Lewiſites* are now daily gaining, is chiefly to be aſcribed to the late horrid combination. Thoſe in the country ſee the plan of a few in the city of New-York to ſubjugate them. The pains which were taken early in the ſeſſion of the Legiſlature by ſome of the repreſentatives from that city, and the lead which they have ſtudiouſly affected, together with the correſpondence between them and Cheetham, open the eyes of the moſt blind. Mr. *Tayler* is ſaid to have been originally intended as one of the members of the Council of Appointment; but to have been afterwards changed for Mr. *Comſtock*, whom the junto conſidered full as good a man, and rather more pliant to their wiſhes. Whether he can be twiſted and duped, time will ſhow. There are thoſe who are of opinion, that, tool as he has been ſuppoſed, he will exert a judgment and will of his own. The good ſenſe, candor and firmneſs of Mr. *Huntingdon* are unqueſtionable. His election was occaſioned more from the junto having no one to put in his place than from any idea they entertained of his ſuppleneſs. His abhorrence of the coalition is as great as any man's; and he is perfectly aware of the projects it was intended to accompliſh. Upon the whole, the faction which has reigned for ſome years paſt, appears to be ſinking gradually and ſilently into utter infamy and contempt.

WARREN.

The Wasp—*Revived.*

BY ROBERT RUSTICOAT, ESQUIRE.

"To laſh the raſcals naked through the world."

COMMUNICATIONS.

FRATERNAL HUG.

THOUGH only a few of the *Burrites* have join'd themſelves to the *Clintonians*, yet while they *fed* together, they ſeem to have been mutually and extremely loving. How tender in Cheetham to toaſt *John Swartwout!* And again in him and Gen. *Bailey* to gulp down *Aaron Burr*. It has been ſuſpected, indeed, that a ſmall matter will not ſhake the former. Some perſons who loved eating, and expected a good dinner, have been known to empty their ſtomachs beforehand by an *emetic*; thus Cheetham may have diſgorged all that vile ſtuff on his ſtomach againſt Col. Burr, Col. Smith, and Mr. Davis, to prepare himſelf for a "feaſt of reaſon and flow of ſoul."

The meeting afterwards of thoſe calling themſelves republicans, and who paſſed reſolutions condemnatory of the glorious union, is to be conſidered as a matter of little conſequence. Reformations, uſeful diſcoveries and inventions have ever been oppoſed by the ignorant. *Galileo* incurred the danger of the inquiſition; it was long before the practice of inoculation for the ſmall-pox generally prevailed; and *Fauſtus*, the inventor of the art of printing, was ſuppoſed to be in compact with the devil. Beſides, mankind are gradually influenced by great leaders. The plan

having been directed and arranged by thoſe whom they are accuſtomed to obey—two ſuch reſpectable gentlemen having preſided at the leaſt, ſitting ſide, by ſide and Cheetham himſelf having been there, and having publiſhed afterwards the toaſts fully, and in due order—ſome may bounce for a while, but they muſt ſoon turn into their proper ſtalls. The wildeſt bullock will in time, with whipping and coaxing, endure the yoke. It is true, that thoſe at a diſtance from the city of New-York, will gape and look wild at the proceeding, perhaps, for ſome months; but information will reach them at laſt, and they will go with the herd. Cheetham has already begun explanatory and apologetical addreſſes; and there needs be no wonder, if he publiſh a pamphlet in favor of Mr. Burr, condemning to the flames all he has hitherto written againſt him; nor needs there be any wonder if ſome people ſtill believe him to be a very able, conſiſtent and upright man.

As to the ſtory that the union was formed in order to divide and ſecure offices, it can be believed only by thoſe who are ſo ſelfiſh as to have no idea of the public good. Cheetham denies it, and this ſettles the point at once. Col. Burr is now no longer a *Cataline*—Col. Smith will never again way lay Ceetham with a large club, to duſt his jacket—and Wortman will pronounce in his next oration, "We few, we happy few, we band of brothers." In ſhort the political machine will henceforth move like clock-work, or play harmoniouſly and cheerily like the muſical glaſſes. BENEVOLUS.

THE UNION,

OR LAST PUSH FOR GREATNESS.

SCENE 1st.

Enter VENOM *ſolus.*

'Tis true, by heaven! this ſturdy honeſty,
This independence firm, that trembles not
Beneath the threatening rod of popular might,
Mars all my greatness. But if pow'r there be,
In democratic wiles, to circumvent
The heedleſs ſtep of conſcious innocence;
If laws, for little villains made, to brave,
And ſoul appaling infamy, can give
Supremacy, this governor ſhall fall.
Within this city's ample bound there lives
A man, by nature form'd for factious deeds;
Whom diſappointment oft has ſorely vex'd,
And many a luckleſs striving to be great.
For ſuch my purpoſe calls: I'll to him ſtraight.
What tho' in epithets well merited,
Of vile abuſe, we have for years convers'd?
What tho' by perſecuting rage impell'd,
We erſt in honour's deadly conteſt ſtrove?
Intereſt commands, I muſt obey my God.
And e'en in this, I'll gratify my hate.
For, cloſing with my offers, deeper ſtill
In infamy will ſink him, and unſeal
The eyes of thoſe, who, hitherto ſeduc'd,
By fair pretence, have thought him honeſt. Then,
My purpoſe anſwer'd, and his dirty taſk
Of treachery perform'd, I'll bruſh him off,
And leave the ſilly dupe, to meet the ſcorn
Of all mankind, and curſe his booby plans.
(*Exit.*)

SCENE 2d.

(*A Chamber in Venom's Houſe.*)

Enter VENOM *and* BLACKWOOD.

Black. Is all ſecure? lurks no ſuſpicious ear
Of foe conceal'd, to catch the terms of peace?

Venom. Be not diſmay'd. E'en echo here is dumb.
The hatter's ſelf might here in ſafety rage.
These walls are faithful. Should they treach'rous prove
And ſpeak, what they have witneſs'd, they'd unfold
A tale of wickedneſs, and plots nefarious,
That e'en thy practis'd heart in knavery,
Would ſtart and ſhudder, at the voice of conſcience,
And like a trembling ſlave, upon the brink
Of guilt, and infamy, would halt. But come,
Let's to the buſineſs.—

(*They retire and confer together for ſometime; during which they look ſuſpiciouſly at each other. At intervals are heard the words Secretary, France, Ambaſſador, &c. &c.*

Black. Amen to any thing. My noble friend,
Adieu! I'll to the clamorous Captain haſte,
And ſtop his mouth, with this moſt glorious news. (*Exit.*)

Venom, ſolus. Poor ſimpleton! yes, ſtop the bawler's mouth,
And it! cloſ'd, until I bid him ope.
Thou'ſt ſold thyſelf, thy character, and all
Thy hopes of honour, for a ſhort reſpite.
Thee have I bought, and with thee all the herd,
Whom lack of principle, or lack of pelf,
The tools have render'd, of thy crooked art.
Now fortune ſmiles. This arm ſhall ſtill direct
With ſecret force, tho' irreſiſtable,
The councils of our ſtate, and hold its ſway
Deſpotic, e'er this wealthy Capital.
Now let cold-blooded honeſty go on,
And ponder upon *law*, and *right*, while I,
Such *ſtuff* deſpiſing, bear the price away.
Let thoſe, in peace purſue their lowly way,
Who vaunt a coward *honour*, that will ſhrink
At the approach of aught, that bears the form,
Or ſemblance, of diſgrace "Here will I hold,"
So long as there are knaves and villains left,
Enough to bear me on their hands aloft,
My foes ſhall tremble, when they hear my name,
Tho' ruin'd thouſands be my ſteps to fame.

D.

FROM MY GARRET.

The united honeſt rogues, ſeem determined to aſcribe the federaliſts' deteſtation of the coalition, to every thing but the right cauſe. To induce their ſimple brethren to fall in with, and applaud the "re-union," they declare that the federaliſts are all Lewiſites, and the Lewiſites all federaliſts, and that the latter condemn the Clintonians and Burrites, for the ſole purpoſe of promoting the views of the governor. They know this is a miſrepreſentation; and every body elſe knows it. The federaliſts deteſt the coalition, becauſe it is, in itſelf, deteſtable. What other motive does an upright man want? Thoſe who regard the coalition merely as to its effect upon the promotion of Gov. Lewis (without taking into conſideration the honor of our ſtate) muſt rejoice at it, becauſe no tranſaction could have operated more favorably for him. Had his excellency and his friends been guilty of the ſame conduct, I ſhould have been equally forward in condemning it. 'Tis not the *men* that I hate; but I hate their *crimes*. Why ſhould Robert Ruſticoat feel a partiality for the perſon of one democrat, more than another? They are all his enemies. They have all raiſed their hands and their voices againſt him. Robert Ruſticoat has not forgotten that *governor* Lewis was once a *judge*; nor has he forgotten *who* was *Attorney-General* at that period; but he well remembers that it was not owing to the lenity of either the judge or the attorney-general that he was not cruſhed. So, it will readily be perceived, that I have no reaſon to feel any perſonal attachment to either the one or the other. Still, if the governor conducts, in ſome things, uprightly and honorably, I ſhall not fail to do him ſtrict juſtice; nor, if his enemies behave knaviſhly and meanly, ſhall I heſitate to render them a little *juſtice*, STRICT JUSTICE, alſo.

Brethren of the ſame Principle.

The other day, on Cheetham's obſerving that the "re-union" was formed of materials that accorded "in principle, in intereſt, and in object," I promiſed to ſearch for what he lately declared to be the principle, object and intereſt of a part of thoſe materials. Inſtead of putting my garret in an uproar, by unrolling the duſty files of Cheetham's paper, I avail myſelf of ſeveral extracts made by the editor of the Morning Chronicle. They are amply ſufficient to prove that the "re-union" is "a compound of as baſe ingredients as the world affords."

Extracts from Cheetham's Paper.

"Frown on the common enemy of all parties [Mr Burr,] who has *no other object* in view than the gratification of unprincipled ambition."

Obſerve, reader, the materials of the "re-union" accord in *object*.

"The adherents of Mr. Burr are composed of the *fag ends* of all parties."

Obſerve again, reader, theſe fag ends *accord* with the other materials.

"Can any man (laying his hand upon his breaſt and knowing all Col. Burr's tricks) pronounce the views or conduct of the vice-preſident *honeſt?* aye *honeſt*—not one."

Yet, they *accord*—all diſhoneſt as they are.

"Who ever believed that the Burrites *ever did*, from diſintereſted motives, a patriotic act, and who, having his ſenſes, *can believe they ever will?*"

Still, they *accord*.

"Mix all the advocates of Col. Burr together, and what will be the compound of character? Character! bad enough."

In perfect *accordance* with the other materials, however.

"Like the Roman Cataline, the object of Mr. Burr is to rally under his ſtandard the diſcontented, the profligate, and the deſperate of both parties."

"It has often been remarked in this paper, that every Burrite in this ſtate is a diſappointed office hunter."

How well theſe materials *accord*.

I might add a column of theſe extracts, in which Cheetham has pronounced Mr. Burr and his adherents, *profligate, unprincipled, abandoned*, &c. &c. &c. But I ſtop here for the preſent. I may proceed hereafter.

Night-Work.

It is hinted that Mr. Burr, has lately been in New-York, *in the night*. There are men whoſe deeds are ſuch that they "chooſe darkneſs rather than light."

There has been a large meeting of *anti-re-union-republicans*, in New-York, at which a ſtring of reſolutions were paſſed, diſapproving of the late treaty. It is ſaid, Cheetham looks black as a felt hat on the occaſion.

Editor's Closet.

The approaching Election,

Is an important one, as there are Aſſemblymen, Senators, and a Member of Congreſs to be choſen. The democrats have already commenced their operations, and, if we are correctly informed, uncommon attempts are making to ſow diſcord, and create a diviſion, amongſt thoſe citizens of the county who conſtitute a clear and decided majority. The attempt, however, will prove abortive. In the preſent diſtracted ſtate of political affairs, the federaliſts may not deem it adviſable to act at all; but if they do act, they will *act together;* and once more convince their opponents that the county of Columbia ſtands unſhaken in the ſtorm.

☞ The federaliſts of the corporation of Hudſon are deſired to meet at the houſe of Mr. Stocking on Thurſday evening next.

TO READERS AND CORRESPONDENTS.

We have received, a pamphlet, entitled, "*an examination of the method of making Bank Bills, from the Stereotype Plate,*" which will be copied into our next number.

"HORATIO," is inadmiſſible. The publication which he ridicules, was inſerted under the ſanction and authority, and at the expence, of a reſpectable ſociety. It ſhould therefore be exempt from anonymous attacks.

Erratum.

In the compact of the Conſcript Company, publiſhed laſt week—third article, for "emolument" read *enrolment*.

Selections.

[The following articles of genuine wit and humour, are copied from the Boſton *Repertory*, the editor of which paper never takes up the pen in vain. Edit. Bal.]

Mr. PHILIP DODDRIDGE, member of the Virginia Legiſlature, who lately entered his proteſt againſt the panegyric on the Preſident, adopted by that body, ſpecifying the reaſons of his diſſent, has been attacked by the democrats, in the ſame very *genteel* and *ſevere* manner, in which they have been wont to attack others, who put Mr. Jefferſon's prominent qualities on record. They call him *Phil Dod.* Now is not that as complete an anſwer to all Mr. Doddridge can ſay, as any thorough bred democrat can require? He has quoted chapter and verſe from the Preſident's ſeveral publications, and ſhews his want both of wiſdom and firmneſs, by his groſs contradictions. And what of that? Why reader, the gentleman's name who points out theſe abſurdities is *Phil Dod*; yes Dod.—Spell it backwards or forwards it is DoD—Is it not as plain as day that every thing he has to ſay is contemptible calumny? Was not the celebrated letter of Thomas Turner refuted, to the ſatisfaction of every ſtaunch friend of Mr. Jefferſon, by proving plainly that it was from the pen of *Tom*. Certainly no matter what *Tom* ſays?

Embaſſy to England.

After having attempted for three months to frighten Great Britain into hyſtericks with paper crackers, Congreſs are now, if report be true, about to ſend an embaſſy, under circumſtances, which will give emphaſis to the expreſſion of the public will. The veſſel to carry the Ambaſſador is to be the HORNET, and the Ambaſſador A. BURR. It is pity ARM-STRONG is ſo united, as the talents of an experienced court will be PITT-ED againſt us.

Reſf's Quaker Coreſpondent, at Waſhington, ſays that when friend *Sloan* introduced his "new moddled bill, impoſing a tax of ten dollars on ſlaves, Mr. *Jackſon* objected to its being read a ſecond time. Some very circumſpect members could not readily make up their minds whether it ſhould have a ſecond reading, and the clerk was ordered, at their requeſt, to read it *a firſt time—again.*

FROM THE UNITED STATES' GAZETTE.

CONGRESS.—Every time a propoſition is offered in the houſe of repreſentatives, which the houſe do not like to meddle with, up ſtarts ſome one of the members and moves to poſtpone the further conſideration of the ſubject until ſome very diſtant day on account of the important buſineſs which is preſſing upon the attention of the houſe. In this motion he always ſucceeds. What comes next? Why, next we find three or four days employed in diſcuſſing the queſtion whether a townſhip of public land ſhall be ſold to a company of German vine dreſſers without intereſt—or elſe we are called upon to liſten by the hour together to the invectives of Mr. Sloan while he rants about the dreadful conſequences which may enſue to the union from the incorporation of a Preſbyterian church in Georgetown. Mr. Gregg, we perceive, has been making another effort to bring up the Yazoo queſtion; but the ſtanding argument, *more important buſineſs*, is objected in his way, and we ſhall probably ſee the whole farce played over again.

We underſtand that the bill to prohibit the intercourſe between this country and St. Domingo has paſſed the houſe of Repreſentatives as it came from the Senate. If this is ſo, it ſhows that the French miniſter can get *his* buſineſs expedited in congreſs, however tardily they proceed with that which concerns the United States.

An obſervation of a foreigner at the Federal City, taken from his journal.

2d MO. 8, 1806.

This day came to Waſhington City, and paſſed on the road a company of black ſlaves, the men chained together, the children in a cart, a black looking perſon driving them before him, carrying a large loaded piſtol in his hand. This company I afterwards ſaw paſſing under the walls of the capitol where congreſs ſit, and near the front of Steel's Hotel, the principle Inn in this place, where ſtood the chief juſtice of the United States, a number of other judges and members of congreſs, the apoſtles of liberty in this day—yet this affecting ſight did not appear to make the leaſt impreſſion on any of them, any more than a company of dogs or horſes might have done.

Monitorial.

To aid the cause of virtue and religion.

.....

Extract from the Miscellaneous Companion, by William Matthews.

TO plead for the gratification of our ſenſual appetites and paſſions, in oppoſition to the ſtill ſmall voice of inſtruction, in the ſecret cloſet of our own minds, is to rebel againſt the plaineſt law of God—to inſult the Supreme Majeſty, by preferring the nature of brute animals, to that more exalted nature which he hath given us, and in which we ſtand related to angels:

It is, in effect, to conclude that this life is more important than the next, and that a few fleeting moments of time are of more concern than eternity!

All our hopes, and all our welfare, depend on the uſe of thoſe talents which the Almighty hath given us:

If we ſuffer them to be corrupted and ſpoiled, the damage muſt be great, and the loſs irreparable.

On the other hand, if we are careful to employ them wiſely, and agreeably to their original deſign, our care will turn to the nobleſt account, and in joy and gladneſs ſhall we reap the fruit thereof forever.

The man who earneſtly endeavors to lead a ſteady and uniform life of virtue, cheriſhing good in himſelf, and brotherly kindneſs and charity towards mankind, will ever find a ſource of conſolation and ſecret triumph within:—

He will find an indiſcribable glow of delight attend him, even under afflictions:—

The ſpirit of that man ſhall ſuſtain his infirmities!

Selections.

FROM THE PHILADELPHIA GAZETTE.

From Waſhington.

2nd Mo. 7th, 1806.

Friend Relf,

Would to Heaven, Friend Relf, thou hadst types of the size of hundred line pica, nay large as the panels of the doors of Olympus, I would compel thee to tell the nation, in letters of such size, that more than half of the House of Representatives are TRIFLERS: more than half of the time the House is trifled away, and many, too many [to be sure too many, if any] trifle *purposely*.

It was long after the usual time of meeting this day before there was a quorum. If gentlemen will be so good, saith the Speaker as to take their seats, there will be a quorum—a pause ensues—a few minutes after the Speaker exclaims—three members only are wanted to make a quorum—[and at this very time from 10 to 15 members are sitting by the fire, and will not stir an inch, for a quorum] After a while, forsooth, a quorum is made and the journal is read. One of the first things done this day was to move [thy man Reib the mover] that when the House adjourn, they adjourn till the 2d of next week. The motion was carried by a small majority.

Gregg's bill providing for naval peace establishment was debated for some time in committee of the whole. At length Friend Goldborough, observing that the bill was quite inconsistent with the arrangement of the navy department, that we are now in a state of neither peace nor war, that it is improper and impolitic to fix any permanent establishment, till other subjects were settled, that would have a great effect on this; moved that the committee rise.--The committee without a dissentient rose; and the speaker asked leave for them to *set* again [as old hens and geese will till something be *hatched*.] This bill fixes the number of officers and men at 920. Why did the Speaker appoint Gregg to hatch this bill? was it because he knew Gregg like himself was unwilling to trouble the country with burdensome expenses to defend our commerce? why was the bill brought up at this time? To *trifle*, Friend Relf, to *trifle* away the time.—Members were many of them *trifling* with noisy chit chat by the fire places, with one another in their seats, at the windows, &c. and talking so loud as greatly to interrupt even the appearance of doing business. Several times, after a member had been speaking another scarcely twenty feet from him, would be obliged to ask him to repeat what he had said. The Speaker would call to order, but seldom enforces his orders [he is himself very apt to talk and chat rather loudly when in committee of the whole.] The Speaker I believe always appoints as Chairman of the committee of the whole, one of the five following persons, Varnum, Dawson, Cregg, Tenney, or J. C. Smith, and the last mentioned is the only one that keeps order, indeed he is far the most proper person for Speaker of the House. But there are other ways by which time is trifled—many committee men are too busy, between the sittings of each day, with sleeping, eating, playing cards, or perhaps worse work, to give due consideration to the bills about to be discussed, or to the framing of bills, hence it may be justly said that many a one of them is a *monstam, horendum informe*, and perhaps a day or two is required for the House to let it into tolerable shape; and often indeed they are obliged to put it again under the wings of the same committee, that they may set upon and re-hatch it. Friend Relf I could tell thee more ways by which time is wasted, but I will not waste time to tell thee now.

Much of the time of the house was *trifled* this day with Leib's half formed bill for fixing the salaries of the officers of the House, i e. clerks, door-keepers, &c. instead of so much per annum and so much per diem, while the House is in session, for the door-keepers a permanent salary is fixed. Bedinger astonished me—he used an *argument*—I would rather, saith he, proportion the salary to the service; let them have so much per diem: for some sessions are of three months, some perhaps of six—proportion the salary to the service.

A resolution of Crowninshield was carried, calling on the secretary of the Treasury for a detailed account of all the foreign goods, wares, &c. exported from the United States the three last years.

Randolph called again the resolution which he offered the last year, to alter the Constitution in such manner that the Judges may be removed at the request of a majority of both Houses of Congress—Veins of cold malice seem to run through the heart of this *rescio quid humani generis*. The subject may occasion debate, but the resolution will not be carried.

Ten weeks have congress been in session, and nothing, or next to nothing, yet done, relative to our disagreements with England and Spain. They know not what to do—they fear all and any steps. Some trifling project was the consequence of the fortnight's closed doors: The Senate with closed doors, have re-discussed that project, and I am informed decided, but I know not how, this day. It is also reported that an ambassador extraordinary (which under the present administration has certainly meant an ambassador *ordinary* in the extreme, or *uncommonly* ordinary, *extra*.) was appointed this day in the Senate, to go to England. This is only report however; yet supported by some with the consideration that the Hornet, (a swift sailer) is ordered to New York for the purpose of conveying a special minister.

THINE.

Law Argument.

FOR THE BALANCE.

The People *vs.* Stephen Arnold.

THE case of Arnold cannot be too much examined. The subject though awful and unprecedented demands a dispassionate hearing. Is the crime for which he was indicted, tried, convicted and sentenced to be put to death, murder? In the discussion of this question, I shall attempt to support the affirmative. The judicial branch of our government has declared the case to be murder, and the legislative department will in all probability give efficacy to that opinion. Whenever murder has been committed, the law of nature as well as the political code, orders the offender to be punished. "For whoso sheddeth man's blood, by man shall his blood be shed." Almost every nation has punished the crime of murder with death; the preservation of government depends on performing that awful duty; to take no other satisfaction for the life of a murderer, but death. "For the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it." The reprieve of Arnold has caused much clamour, and given rise to considerable political animosity: but the voice of party should have been silenced. If there is *doubt*, let the expediency of the Governor's reprieve be granted, and it then becomes a subject for legal investigation. In my view of the case, the facts that constitute murder, are the *manner* of correcting the child, and the *quantity of punishment* used which occasioned her death—From these two points it will be shewn that the case is murder. For the information of those who have not perused the testimony, I shall here insert the report of the evidence taken by Judge Kent and transmitted to the Governor. It was as follows: "That the girl lived in Arnold's family, and was about six years of age—That on the evening of the 10th January, the girl did not pronounce the word *gig* correctly, or as he directed, and that while at supper he pronounced the word as he said she ought to—That he went after supper and got eight beach sticks and trimmed them out and suppled them in the fire, and took the girl out of doors seven times in succession, and when she was brought in at each interval, the girl said she would try to pronounce the word as he wished, but failed in the attempt—That he told her how to pronounce the word when she was brought in the last time and she pronounced it right—That he had not told her how to pronounce it before, except while he was at supper and before the whipping—That from the time that the girl was first taken out of doors until she was last brought in was one hour and an half—That the interval between each whipping was ten minutes, and the last time he was out was near half an hour—That he confessed he had stripped her clothes over her head and held them in his hand across a stake or crotch—That her flesh was bruised and lacerated from her shoulders to the calves of her legs, and that the girl was soon after seized with a fever and delirium, and died on the 14th of January—The physicians had no doubt but that the child died by reason of the whipping, and Arnold admitted that the whipping was in consequence of his malignant passions—There was good reason to conclude, that he had no deliberate intention of putting the child to death, for he expressed a hope when he came

into the house the last time, that he had not whipped the child to death, and he expressed the deepest concern, when the dangerous situation of the child was discovered.

"Upon these facts, I told the jury, that they constituted a case of murder. That it was not requisite that there should have existed a deliberate intention to kill—That if the jury should be of opinion under the circumstances of this case, that the beating was unlawful and barbarous, and denoted a depraved and malignant disposition, (and such was my opinion) it constituted in judgment of law, a case of killing with malice aforethought, for that the law presumed or implied the malice from the malignity of the disposition which the act indicated."

This report of the evidence will fully enable the reader to understand, how properly, the rules of law which I shall cite are applicable.

Murder is defined by Lord Coke, "when a person of sound memory and discretion, unlawfully killeth any reasonable creature in being and under the king's peace, with malice aforethought either express or implied."

First.—The person that commits murder must be in the language of Coke, "of sound memory and discretion." So far Arnold had two of the qualities, necessary to constitute murder. *Secondly*.—"Unlawfully killeth any reasonable creature, with *malice aforethought either express or implied*." The conduct of Arnold justly merits the application of this rule. The killing must be unlawful, and those acts which produce death must be replete with such circumstances as to make the exercise of them unlawful. If there is no warrant or excuse, the killing is unlawful. To justify the conduct of Arnold, all that he did in chastening the child must be *lawful* and if lawful, he is warranted and excused. It may be said (and very correctly) that he was administering correction in obedience to a lawful authority. That a parent has a right to chastise his child, a master his servant and an officer his criminal. The Roman law even permitted the parent to take away the life of his child: that he who had given life, had the right to take it away. But our law knows of no such right or principle; it is much more restricted. He may *lawfully* correct his child being under age, in a reasonable manner, for this is for the benefit of his education. If Arnold had applied prudence as a substitute for indiscretion: if mildness had been exemplified and not the depravity of a wicked heart, and by accident the child was killed, it would have been no *unlawful killing*. It is the maliciousness of man's disposition that frequently produces serious and important injuries. Life becomes the victim of an heated and angry mind. In those cases the justness of our laws has prescribed such punishment on the offender, that is calculated to give example to others and to prohibit the commission of like crimes. The passions of Arnold were barbarous, depraved and malignant; not merely ruffled at an injury aimed at his feelings, but with a heart filled with wickedness and savage cruelty, he during the period of an hour and an half (with a few minutes of intermediate time excepted) continued to administer chastisement in a *manner* that in itself was inhuman and immoderate. Blackstone observes in his 4th Vol. page 182, "where a parent "is moderately correcting his child, a master his "apprentice or scholar, or an officer punishing his "criminal and happens to occasion his death, it "is merely misadventure: for the act of correction "was *lawful*. But if he exceeds the bounds of "moderation, either in the manner, the instrument "or the quantity of punishment, and death ensues, "it is manslaughter at least, and in some cases (ac- "cording to circumstances) murder, for the act of "immoderate correction is *unlawful*." The *manner* of correcting the child, was unlawful and immoderate. It was in the winter season, when the coolness of the air compels us to cling to the fire-side. He took this infant child of six years of age into the open air; exposed her naked limbs to the inclemency of the weather and there exhibited the depravity of his feelings. Not contented with the first attack upon the helpless infant: not having spent sufficient of his cruel passions, he continued the attack seven times, till the child was "bruised and lacerated from her shoulders to the calves of her legs." The seventh and last attack put an end to her existence.

In Hale's P. C. page 174, "If a school master "corrects his scholar, or a master his servant, or a "parent his child, and by struggling or otherwise "the child, or scholar or servant dies; this is only "homicide *per infortunium*. But this is to be under- "stood when it happens only upon *moderate* cor- "rection; for if the correction be with an unfit in- "strument or *too outrageous*, then it is murder."

If the child had frozen to death, while under the scourge of Arnold's passion, he would beyound doubt have been guilty of murder. The season of the year, and the exposure of her naked limbs to the cold, might in all probability have occasioned her death. 4th Blackstone's Com 197. "If a man "however does such an act of which the probable "consequence may be and eventually is death, such "killing may be murder, although no stroke be "struck by himself, and no killing may be prima- "rily intended. As was the case of the unnatural "son, who exposed his sick father to the air against "his will, by reason whereof he died; of the har- "lot who laid her child under leaves in an orchard "where a kite struck it and killed it; and of the "parish officers who shifted a child from parish "to parish till it died for want of sustenance." In this part of the argument it must be conceded that the manner of correction was unlawful. "He confessed he had stripped her cloathes over her head and held them in his hand across a stake or crotch." Was this a moderate and discreet method of chastisement? The strength of a child of six years old, could not have prevented a man of Arnold's vigour from punishing as much as a child deserves. Why extend her body "across a stake or crotch" without it was further to gratify the wickedness of his spirit. In case the child had died in consequence of a cold it might have taken, and not from the whipping it will not be denied but what it would have been murder. And how much stronger in the present case where the death was occasioned from the quantity of punishment used in correcting. I rely upon the manner of whipping, as one of those strong and aggravating circumstances as is necessary in a case of this kind to convict the offender of murder. Some may without strictly attending to the circumstances, deem the offence to be merely manslaughter; but the facts here are too criminal to be so decided, and nothing less than murder can be shewn in the case of Arnold. The correction caused her death and *that* only. The manner of chastising did not; neither did the *instrument* used in whipping: But it was the quantity of punishment, that gave a decisive blow to her existence.

The books furnish no adjudged case similar to that of Arnold, and it may be said this is the first of the kind, that a parent would whip his child to death under color of correction, is too barbarous to be thought of, and I presume to assert that the case never happened among civilized nations. In Hale's P.C. page 454 *excessive correction* connected with other facts, was decided to be murder. A boy came into Osterly park to steal wood, and seeing the woodward, climbs up a tree to hide himself; the woodward bids him to come down, he comes down and the woodward struck him twice, and then bound him to his horse-tail, and dragged him till his shoulders were broke, whereof he died: it was ruled murder, because, first, The *correction was excessive*. Second, It was a deliberate act of cruelty. The introduction of this case as applicable to Arnold, is not wholly considered as deciding the question; But to strengthen the idea that murder may arise from excessive correction or the quantity of punishment applied. The woodward was convicted of murder founded on implied or presumed malice. This case is instanced by Blackstone as forming express malice; as also where the blacksmith corrected his servant with a bar of iron, and the schoolmaster stamped on his scholar's belly: the schoolmaster and blacksmith are guilty of murder by express malice: that is by an express evil design, the genuine sense of *malitia* This author must certainly be incorrect in such opinion; for the cases which he cites to warrant the opinion are decided expressly on the ground of implied malice—The definition which Blackstone himself has adopted of express malice does not support such an opinion—4th Black. Com. 199. "Express malice is "where one with a sedate deliberate mind, and "formed design doth kill another: Which formed "design is evidenced by *external* circumstances dis- "covering that inward intention, as laying in wait, "antecedent menaces, former grudges and concert- "ed schemes to do him some bodily harm." Hale adopts the same definition. Malice that makes the killing of a man to be murder, is of two kinds, *First*, malice in fact, or *Second*, malice in law, or a *ex presumptione legis*. The latter of which arises out of the circumstances in Arnold's case: It is not pretended that he is guilty of express malice. There is no formed design to kill evidenced before the attack, no discovery of inward intention, as menaces, &c. to injure or kill the child. If a master use an unlawful *instrument* in correcting his servant, and death happen, it is murder: the law judges it to be *malice prepense*. Kelyng, Rep. 64. "If a father, master "or schoolmaster, will correct his child, servant or "scholar, they must do it with such things as are "fit for correction and not with such instruments "as may probably kill them. For otherwise under "pretext of correction a parent might kill his child, "or a master his servant, a schoolmaster his "scholar, and a bar of iron is no instrument for "correction. It is all one as if he had run him "through with a sword." If there is malice in a case so barbarous as the one quoted; it must be implied. The law judges it to be malicious from the *unlawfulness* of the instrument made use of in correcting. The case of the master who having a piece of hot iron in his hand run it into his servant's belly and killed him, was decided to be murder, not done with express malice, having a sedate, deliberate mind and formed design; but implied malice flowing from the wickedness of the mind which the act indicated. Therefore, says Kelyng, "where a master strikes his servant with "lingly, with such things as those are, if death en- "sue, the law shall judge it *malice prepense*," the same language may be continued further, when a parent or master corrects his child or servant, let it

be done in a prudent, careful and moderate manner: let the quantity of punishment be dealt out with a cautious hand; for if death ensue from immoderate correction; the law shall judge it murder of *malice prepense*.

The authority to correct is lawful, but that authority is limited and bounded by prudence and discretion. Whenever, therefore, this authority is abused and extended beyond the bounds fixed by law, whatever is done under, pretence of that right is unlawful. The husband has a right, (if the Governor's opinion is correct) to chastise his wife, so that it be done with moderation and prudence. He is considered the governor of his family; and all belonging to it, are considered in some degree as acting under his authority, and subject to his orders. The relation, therefore, between husband and wife, in point of authority, is nearly the same as that between parent and child. This authority gives the husband a right to moderately correct his wife. But immoderate correction is unlawful and not justified. As in this case: "If there be chiding between husband and wife, and the husband strikes his wife "thereupon with a pestle, that she dies presently, "it is murder, and the chiding will not be a provocation to extenuate it to *manslaughter*." 1st Hale's P. C. 457. The *instrument* for correction, made use of by the husband, was unlawful. He had abandoned the character of a guardian, watchful for the safety and happiness of his companion; but he put on the ferocity of a savage, and thereby gave room to his malignant spirit. Suppose the *instrument* the husband used in chastising his wife, had been reasonable, and from the manner and the quantity of punishment applied, the wife had been killed; who can doubt but what it would form a case of murder? The affection for each other, is as powerful in one case as the other. The sufferings which each experience, awaken the feelings of the husband, and he becomes a partner in their misfortunes. Arnold was once viewed as the father and protector of this infant child, under whose roof she was secured from danger. He looked upon her as his own; and she might in time have repaid the debt of gratitude, had not the fatal blow been struck. His wicked and depraved mind, caused the unhappy tale already related, and consigns the name of Arnold among the black catalogue of murderers.

In the human breast, there are three distinct passions —Envy, Hatred and Malice. Some have been led into a mistake by not well considering what the passion of malice is. They have construed it to be, a rancour of mind lodged in the person killing, for some considerable time before the commission of the fact, which is a mistake arising from the not well distinguishing between hatred and malice. Envy is properly a repining or being grieved at the happiness and prosperity of another. Hatred is a rancour fixed and settled in the mind of one towards another, which admits of several degrees. But malice, *malitia præcogitata* intends the doing of mischief. That mischievous intent is drawn from the unlawfulness of the act committed. Foster, 256, says, that the "law, by the term malice, means "only, that the fact has been attended with such "*circumstances* as are the ordinary symptoms of a "wicked, depraved, malignant spirit." The application of this definition of malice to the case of Arnold, will at once be seen to be proper, and leaning directly upon the point in dispute. It is only necessary to discover malice, to make out murder. If the child had been whipped to death, so that it died while receiving the blows, would not *that* have denoted, 'a wicked, depraved, and malignant spirit;' and would not Arnold, in such case, been guilty of murder? Are not those *circumstances*, already pointed out, sufficiently aggravating to conclude, that it was the wickedness of the heart that caused the death? The legal acceptation of the term malice, imports a *wickedness* which the daring and violent circumstances of the case produce. In discovering implied malice, the facts consequent upon the transaction must be enquired into; and from those facts, the law judges the act committed to be malicious or not."

"If a prisoner die by reason of duresse and hard usage by the gaoler, it is murder in the goaler." 1. H. P. C. 466. If murder can in any case be made out from implied malice, I with confidence submit the case of Arnold to be of that number. Had the child been corrected in a *manner* prudently; and had the *quantity of punishment* been moderately applied, and by accident the child was killed; the offence would have been excusable homicide. Because the authority of chastising was lawful and no ways immoderate. If an indictment had been presented against Arnold upon such a supposed case, he would have been acquitted, and that by our statute, 1st vol. R. L. page 62. This brings me to an examination of our act concerning murder, which, being relied upon as forming a defence for Arnold, and recommended by the governor to the legislature to examine; it becomes important that it should be understood, and receive a fair and just construction. At common law, the person that was guilty of justifiable homicide, was in no kind of fault, not even in the minutest degree, and was always to be totally aquitted and discharged, with commendation rather than blame: But in excusable homicide *per infortunium*, the case is different, the offender is in some fault and forfeits his goods. 1 Hale, P. C. 477. This forfeiture our act has taken away and discharges the party entirely, which is the only alteration made in the common law. Hawk. P. C. 1. vol. 104, "Homicide against the life of another "either amounts to felony, or does not. That "which amounts not to felony is either justifiable, "and causes no forfeiture at all, or excusable and "causes the forfeiture of the party's goods." In excusable homicide there was a pardon to be procured before the killer could be discharged, and the practice was generally to bail him till the next term or session, that he might sue out his pardon of course upon a certificate of the nature of his conviction—"For though it was not his crime, but his misfortune, yet because the king hath lost his "subject, and that men may be the more careful, he *forfeits his goods*." 1 Hale's P. C. 478. The legislature here viewed the severity of the common law rule, and have applied a proper remedy. In the same act concerning murder, section 5th "persons killing in self-defence, or by *misfortune*, shall "not *forfeit* or lose any thing for the death of the "person killed, but shall be thereof, and for the "same fully acquitted and discharged." This is the only instance that can be shewn, wherein the act is remedied; the mischief of forfeiture being prevented. The section which the advocates for Arnold say excuses him from the crime of murder, shall now be examined. It will be found in 1 Vol. R. L. page 60th and section 2d "that if any person or persons shall stab or thrust any person or "persons, that hath not then any weapon drawn, or "that hath not then first stricken the party who "shall so stab or thrust, so as the person or persons "so stabbed or thrust shall thereof die, within the "space of six months, then next following, altho' "it cannot be proved that the same was done of "malice aforethought, every such unlawful killing, "shall be adjudged, taken and deemed wilful murder. "And the offenders therein, their aiders, abettors, "procurers and counsellors, shall suffer death, and "forfeit in every behalf as in other cases of wilful "murder of malice prepense. But this shall not "extend to any person or persons who shall kill a"ny person or persons in his, her or their own de"fence, or by misfortune; or in any other man"ner than as aforesaid:—nor to any person "or persons, who in keeping and preserving the "peace, shall chance to kill any person or persons; "so as such killing be not done wittingly, willingly "and of purpose, under pretext and colour of "keeping the peace: nor to any person or persons, "who in chastising or correcting his, her or their "child or servant, shall, contrary to his, her or "their *intent* and *purpose* chance to kill such child, "or servant." The legislature, in making this statute, have copied verbatim the English act of James I C. 8. What they intended by doing this, is to me inexplicable. Was such an act necessary or did they trust to luck for its operation? did the situation of our state demand the enacting such a law? were the people stabbing each other in consequence of party animosity? No one will pretend that such was the state of our affairs. The state of society was peace, and the government free from danger. It must have intended nothing more than declaring what the common law was. It may be said that I have questioned too much the intention of the legislature in passing this act, I have reason to observe, that they were not cautious enough when they took the English act for a precedent. They did not, I fear, look into the object for which that act was made. Though it has not altered the common law, from the construction that is now given it, yet we were under no necessity for such an act. The remark of Blackstone, upon the statute of James, will present the object of the statute in a clear and conspicuous point of view: "This statute was made on *account* of the frequent quarrels and stabbings, with short daggers, between the Scotch and English, at the accession of James I. and being, therefore, of *temporary nature*, ought to have expired with the mischief, which it meant to remedy. For, in point of solid and substantial justice, it cannot be said that the mode of killing, whether by stabbing, strangling or shooting, can either extenuate or enhance the guilt. But the benignity of the law hath construed the statute so favorably in behalf of the subject, and so strictly when against him, that the offence of stabbing now stands almost upon the same footing as it did at the common law." 4 B. C. 193. This able and distinguished writer, traces the cause of this act and points out the mischief it was intended to remedy. The practice of stabbing was frequent, as the passions of men, at that time, were warm, and disposed to spill each others' blood. Life was taken away by surprise; and for the safety of the subjects, the legislature interposed their authority to prevent the growing evil. The offence of stabbing, at common law, upon a sudden provocation, was manslaughter, and like killing in any other manner, as with clubs, if under such circumstances as to make it manslaughter. The mode of killing is not material; if done by strangling, poisoning or shooting, the guilt is the same. Hawkins speaking of the statute of James, page 116, says, "It is generally holden, that this statute is but *declaratory* of the common law. That there is no need to lay the conclusion of the indictment *contra formam statuti*, because the statute *makes no new offence*, but only takes away the privilege of the clergy from an old one, and leaves it to the judgment of the common law."

Poisoning will be found to be murder at common law, and so declared by our act concerning murder, 1st section. Here the legislature have made no alteration; therefore they could intend no more than affirming the common law, and so far as the adjudications go in construing the act of James, they universally decide it to be declaratory only. It is a sound rule of law, that when the common law and the statute *differ*, the former gives way to the latter. If the statute alters the law which I have applied, as governing and deciding the case of Arnold, then the act must operate. This variation is what I shall attempt to discover. So far, the examination of this act, relates merely to the enactive part. The provisional cases in this act are next in order. For clearness and perspicuity, it is preferable to take each of those cases, and discuss them separately:—"But this shall not extend to any person or persons, who shall kill any person or persons in his, her or their own *defence*, or by *misfortune*, or in any other manner than as aforesaid." The remark which Kelyng makes upon this statute, page 28, may here properly be introduced. "That although if an officer or other person kill another in preserving the peace, or a parent, master or schoolmaster, kills his child, servant or scholar in chastising or correcting him, this shall be said to be *per infortunium*. Yet see Stat. 1 Jas. C. 8, for stabbing. there at the end of it, there is a proviso, that the statute shall not extend to any person who shall kill in keeping and preserving the peace, so as the manslaughter be not committed wilfully and of purpose, under pretext of keeping the peace; nor to a master or parent in chastising his child or servant, besides his or their intent and purpose. So that those *circumstances* are inquirable in those cases." The question may here be put—what circumstances are to be enquired into in those cases? If it is pretended that the killing was in self defence, the party justifying the killing, must shew such circumstances to the court, as it may appear that it was in self-defence. A person has a right, by the common law, to defend himself from the attacks and assaults of others; and if he kills in such defence, he is not guilty of murder, but homicide *se defendendo*, and by our act, shall loose nothing, but be entirely discharged. If the person defending himself, was indicted for murder, would he be tried by rules of the common law, or by the statute? would you, in the indictment, lay two counts, one upon the statute, and the other at common law; or would the act have any thing more to do with the offender than if, upon the trial, it was found, that the killing was in self-defence, but to acquit and discharge

him entirely? To me, the conclusion is irresistable, that he could be tried by the rules of the common law only. If the killing was "by misfortune," the act against stabbing does not extend to it. That act declares expressly the killing to be done with malice aforethought, and adjudges it to be wilful murder of malice prepense. Therefore, this act shall not extend to those cases which rest upon *implied malice* only, and that malice to be inferred or presumed from the circumstances attending the transaction. As if a person shooting at a mark and undesignedly kills a man, it is homicide *per infortunium*, for the act is lawful and the effect merely accidental. The killing in such a manner shall not be adjudged done with malice prepense, but the circumstances are to be enquired into, and those circumstances are to decide the innocence or guilt of the accused. The master, in correcting his servant, must use instruments fit for correction; should he by accident kill him, the fact of misfortune is to be proved. The statute shall not extend to "any person or persons, in keeping or preserving the peace, shall chance to kill any person or "persons, so as such killing be not done wittingly, "willingly and of purpose, under pretext and "colour of keeping the peace." Suppose a public officer should kill one in an attempt to preserve the peace, what circumstances must he shew to justify the killing? By what laws are you to try him? none but the common law. He must shew that he is an officer, and was acting in the execution of such office. That the person killed, resisted the authority of the people. These facts, if made out, make the officer guilty of *justifiable homicide*. But, to reverse the case: If there was no occasion to make use of that authority which a public officer is cloathed with; as if there is no riot committed, the peace not disturbed, or say, there is a slight disturbance, and by the *moderate* use of his authority, the peace could be secured; but the officer wittingly, willingly and of purpose, under pretext and colour of keeping the peace, kill one, from the immoderate use of his authority—the case would be murder; although an officer has by law an authority to correct the disturbers of the peace, yet this right may be abused and become unlawful. As if, from circumstances it should appear, that there was no cause, no provocation, or if any, very slight, and he committed a transgression of that authority, from which death ensued, the law would presume it to be done, "wittingly, willingly and under pretence of of keeping the peace" But should circumstances manifestly exhibit a cause for the interposition of the authority of the officer, and death happen, it would be *justifiable homicide*. These provisional cases in the act that have been already examined, will be readily seen, have received no alteration, and that there is yet in our law cases in which malice may be presumed to convict of murder. There are a number of cases in this act excepted, and which come under the general expression, "or in any other manner than as aforesaid." To instance a case that would be included within this general provision, where the prisoner died by reason of duresse and hard usage by the goaler, it was held murder in the goaler. It is not express malice that makes the goaler guilty of murder, but malice implied or presumed, arising from the wickedness and depravity of the goaler's disposition. The last case excepted in this act is this, nor shall the statute extend "to "any person or persons, who in chastising or correcting his, her or their child, or servant, shall "contrary to his, her or their *intent* and *purpose*, "chance to kill such child or servant." Upon this part of the statute, the advocates for Arnold have attempted to find refuge. Its sound construction is all that I shall attempt to discover. Had the words "contrary to his, her or their intent and purpose," been omitted, in the act, how would it then be construed? These words seem to create the only embarrassment if any. If a parent in correcting his child, should, by a moderate blow, occasion the child to fall upon an ax or a sword, by which it was killed, this would be accidental homicide in the parent. It would evidently appear that it was "contrary to his *intent* and *purpose*" that the child was killed. Had he taken the ax or sword, and made use of it as an instrument for correction, and by that put an end to the child's life, it would be murder. The *instrument* of correction which occasioned the death of the child, would do away the idea that it was not his "*intent* and *purpose*" to kill; for the law presumes and implies malice from the *instrument* used in chastising; that no man would correct his child with such a weapon, unless possessed of a *wicked, depraved* and *malignant* spirit. Arnold did not kill the child by accident; but the killing was unlawful from the manner in which the child was corrected, and the quantity of punishment used. Had the infant died while under the lash of correction, the law would judge it murder, and infer malice from the barbarity of the act. That this may prevent parents from correcting their children, when they are deserving it, cannot be relied upon as forming an objection to convict Arnold of murder. The helpless and innocent must be protected, and by this means parents will be cautious in the exercise of their authority. Children frequently deserve chastisement; but their lives can never be at the disposal of their parents. Arnold, I pronounce to be a murderer, and if an earthly tribunal does not administer that justice which he deserves, and faithfully execute those laws which secure our persons and property; there is a place where he will be judged for this wicked deed, and by that judgment depends his forgivness or everlasting misery.

COMMENTATOR.

HUDSON, *March 7th*, 1806.

Hudson, *March* 18.

Be it our weekly task,
To note the passing tidings of the times.

Naval Victory.

The following account of a late *warm* naval engagement, in the West-Indies, is taken from the Evening Post of the 8th instant:—

Capture of the Brest Squadron.

The following letter from Capt. Pemberton, of the Brig Mars, to Mr Samuel Burling, of this city, dated at the City of St. Domingo, February 9 contains an account of the destruction of the Brest squadron at that place, by Admiral Duckworth. The letter was received this morning via Baltimore.

ST DOMINGO, *Feb.* 9.

"The following is a statement of the engagement before St. Domingo on Thursday the 6th. At daylight, the English fleet hove in sight to the S. E. As great numbers of the French seamen were on shore, wooding and watering, it was not until 7 o'clock that the French ships got under way. The Imperial 134 guns, Le Brave and Alexander 84 each, Le Jupiter and Diomede 74 each, 2 frigates 40 each, and a corvette 28 guns. At 9 o'clock the French formed the line; their frigates and corvette keeping within shore of them—at 10 the English headmost ship commenced her fire upon the French line, and proceeded entirely alone to break the line, and was successful; the whole of the French line firing upon her for at least 20 minutes, before the others could come up; she was entirely dismasted. The rest of the English by this time came up, consisting of 6 heavy ships, besides the one dismasted, among which was the Dragon, Admiral Duckworth. The French Admiral in the smoke, mistaking the Alexander for an English ship, fell upon him, and immediately cut away his masts by the board, and rendered him entirely useless. By this time 2 English 84's came along side the French Admiral, and knocked the ports of his middle and upper decks into one, in such a manner, that the decks, with the weight of metal, from the main hatchway forward fell down upon the lower deck, & crushed many poor fellows to pieces. The French Admiral being wounded, and finding it impossible to escape, ran his ship, the Imperial, on the rocks to leeward of the city, the Diomede followed his example, and the others all struck their colors, and were taken possession of by the English. The French ships fought bravely, except Le Brave, and she struck the 3d round. It is reported that they cannot find more than 320 of the crew belonging to the Imperial, which consisted of 1350, including 200 soldiers. The Diomede had 200 killed before she went on shore, and many drowned and killed in attempting to climb the rocks on shore which from the surf made it very dangerous. Some of the English ships suffered very much both in their hulls and rigging, and although they have taken the ships they have not much to brag of. I believe I saw the whole of the engagement from the top of the house. It is a lucky thing however, for the St. Domingo traders, for the fleet was going down the coast to plunder and burn the brigand ports, so that had not this happened, many of our American vessels must have been taken, & of course condemned. The people are in some consternation about this English fleet now off; they seem to have had another engagement to windward, as there is a French line of battle ship off the harbour dismasted, and an English fleet came this day in sight, one of the 74's has lost her mizenmast, they cannot be any of the fleet that engaged the day before yesterday....however, the account of the English will come from Jamaica no doubt soon, but this statement may be relied upon as authentic.

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2. The Russian army shall evacuate the Austrian States, as well as Polish Austria, viz. Moravia and Hungary, within fifteen days, and Gallicia within a month. The order of their march shall be traced, so that it may be always known where it is, as well as to prevent all misunderstanding.

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BY order of the hon. James Kent, Esq. chief justice of the supreme court of judicature of the state of New-York—Notice is hereby given to all the creditors of Daniel Haynes, of the village of Athens, in the county of Greene, an insolvent debtor, to shew cause, if any they have, before the said Justice, at his dwelling house, in the city of Albany, on the 22d day of April, next, at ten o'clock in the forenoon, of said day, why an assignment of the said [illegible]

be done in a prudent, careful and moderate manner: let the quantity of punishment be dealt out with a cautious hand; for if death ensue from immoderate correction; the law shall judge it murder of *malice prepense*.

The authority to correct is lawful, but that authority is limited and bounded by prudence and discretion. Whenever, therefore, this authority is abused and extended beyond the bounds fixed by law, whatever is done under, pretence of that right is unlawful. The husband has a right, (if the Governor's opinion is correct) to chastise his wife, so that it be done with moderation and prudence. He is considered the governor of his family; and all belonging to it, are considered in some degree as acting under his authority, and subject to his orders. The relation, therefore, between husband and wife, in point of authority, is nearly the same as that between parent and child. This authority gives the husband a right to moderately correct his wife. But immoderate correction is unlawful and not justified. As in this case: "If there be chiding between husband and wife, and the husband strikes his wife thereupon with a pestle, that she dies presently, it is murder, and the chiding will not be a provocation to extenuate it to *manslaughter*." 1st Hale's P. C. 457. The *instrument* for correction, made use of by the husband, was unlawful. He had abandoned the character of a guardian, watchful for the safety and happiness of his companion: but he put on the ferocity of a savage, and thereby gave room to his malignant spirit. Suppose the *instrument* the husband used in chastising his wife, had been reasonable, and from the manner and the quantity of punishment applied, the wife had been killed; who can doubt but what it would form a case of murder? The affection for each other, is as powerful in one case as the other. The sufferings which each experience, awaken the feelings of the husband, and he becomes a partner in their misfortunes. Arnold was once viewed as the father and protector of this infant child, under whose roof she was secured from danger. He looked upon her as his own; and she might in time have repaid the debt of gratitude, had not the fatal blow been struck. His wicked and depraved mind, caused the unhappy tale already related, and consigns the name of Arnold among the black catalogue of murderers.

In the human breast, there are three distinct passions —Envy, Hatred and Malice. Some have been led into a mistake by not well considering what the passion of malice is. They have construed it to be, a rancour of mind lodged in the person killing, for some considerable time before the commission of the fact, which is a mistake arising from the not well distinguishing between hatred and malice. Envy is properly a repining or being grieved at the happiness and prosperity of another. Hatred is a rancour fixed and settled in the mind of one towards another, which admits of several degrees. But malice, *malitia præcogitata* intends the doing of mischief. That mischievous intent is drawn from the unlawfulness of the act committed. Foster, 256, says, that the "law, by the term malice, means "only, that the fact has been attended with such "*circumstances* as are the ordinary symptoms of a "wicked, depraved, malignant spirit." The application of this definition of malice to the case of Arnold, will at once be seen to be proper, and leaning directly upon the point in dispute. It is only necessary to discover malice, to make out murder. If the child had been whipped to death, so that it died while receiving the blows, would not *that* have denoted, 'a wicked, depraved, and malignant spirit;' and would not Arnold, in such case, been guilty of murder? Are not those *circumstances*, already pointed out, sufficiently aggravating to conclude, that it was the wickedness of the heart that caused the death? The legal acceptation of the term malice, imports a *wickedness* which the daring and violent circumstances of the case produce. In discovering implied malice, the facts consequent upon the transaction must be enquired into; and from those facts, the law judges the act committed to be malicious or not."

"If a prisoner die by reason of duresse and hard usage by the gaoler, it is murder in the goaler," 1. H. P C. 466. If murder can in any case be made out from implied malice, I with confidence submit the case of Arnold to be of that number. Had the child been corrected in a *manner* prudently; and had the *quantity of punishment* been moderately applied, and by accident the child was killed; the offence would have been excusable homicide. Because the authority of chastising was lawful and no ways immoderate. If an indictment had been presented against Arnold upon such a supposed case, he would have been acquitted, and that by our statute, 1st vol. R. L. page 62. This brings me to an examination of our act concerning murder, which, being relied upon as forming a defence for Arnold, and recommended by the governor to the legislature to examine; it becomes important that it should be understood, and receive a fair and just construction. At common law, the person that was guilty of justifiable homicide, was in no kind of fault, not even in the minutest degree, and was always to be totally aquitted and discharged, with commendation rather than blame: But in excusable homicide *per infortunium*, the case is different, the offender is in some fault and forfeits his goods. 1 Hale, P. C. 477. This forfeiture our act has taken away and discharges the party entirely, which is the only alteration made in the common law. Hawk. P. C. 1. vol. 104, "Homicide against the life of another "either amounts to felony, or does not. That "which amounts not to felony is either justifiable, "and causes no forfeiture at all, or excusable and "causes the forfeiture of the party's goods." In excusable homicide there was a pardon to be procured before the killer could be discharged, and the practice was generally to bail him till the next term or session, that he might sue out his pardon of course upon a certificate of the nature of his conviction—"For though it was not his crime, but his misfortune, yet because the king hath lost his "subject, and that men may be the more careful, he *forfeits his goods*." 1 Hale's P. C. 478. The legislature here viewed the severity of the common law rule, and have applied a proper remedy. In the same act concerning murder, section 5th "persons killing in self-defence, or by *misfortune*, shall "not *forfeit* or lose any thing for the death of the "person killed, but shall be thereof, and for the "same fully acquitted and discharged" This is the only instance that can be shewn, wherein the act is remedied; the mischief of forfeiture being prevented. The section which the advocates for Arnold say excuses him from the crime of murder, shall now be examined. It will be found in 1 Vol. R. L. page 60th and section 2d "that if any person or persons shall stab or thrust any person or "persons, that hath not then any weapon drawn, or "that hath not then first stricken the party who "shall so stab or thrust, so as the person or persons "so stabbed or thrust shall thereof die, within the "space of six months, then next following, altho' "it cannot be proved that the same was done of "malice aforethought, every such unlawful killing, "shall be adjudged, taken and deemed wilful murder. "And the offenders therein, their aiders, abettors, "procurers and counsellors, shall suffer death, and "forfeit in every behalf as in other cases of wilful "murder of malice prepense. But this shall not "extend to any person or persons who shall kill a"ny person or persons in his, her or their own de"fence, or by misfortune; or in any other man"ner than as aforesaid:—nor to any person "or persons, who in keeping and preserving the "peace, shall chance to kill any person or persons; "so as such killing be not done wittingly, willingly "and of purpose, under pretext and colour of "keeping the peace: nor to any person or persons, "who in chastising or correcting his, her or their "child or servant, shall, contrary to his, her or "their *intent* and *purpose* chance to kill such child, "or servant." The legislature, in making this statute, have copied verbatim the English act of James I C. 8 What they intended by doing this, is to me inexplicable. Was such an act necessary or did they trust to luck for its operation? did the situation of our state demand the enacting such a law? were the people stabbing each other in consequence of party animosity? No one will pretend that such was the state of our affairs. The state of society was peace, and the government free from danger. It must have intended nothing more than declaring what the common law was. It may be said that I have questioned too much the intention of the legislature in passing this act, I have reason to observe, that they were not cautious enough when they took the English act for a precedent. They did not, I fear, look into the object for which that act was made. Though it has not altered the common law, from the construction that is now given it, yet we were under no necessity for such an act. The remark of Blackstone, upon the statute of James, will present the object of the statute in a clear and conspicuous point of view: "This statute was made on *account* of the frequent quarrels and stabbings, with short daggers, between the Scotch and English, at the accession of James I. and being, therefore, of *temporary nature*, ought to have expired with the mischief, which it meant to remedy. For, in point of solid and substantial justice, it cannot be said that the mode of killing, whether by stabbing, strangling or shooting, can either extenuate or enhance the guilt. But the benignity of the law hath construed the statute so favorably in behalf of the subject, and so strictly when against him, that the offence of stabbing now stands almost upon the same footing as it did at the common law." 4 B. C. 193. This able and distinguished writer, traces the cause of this act and points out the mischief it was intended to remedy. The practice of stabbing was frequent, as the passions of men, at that time, were warm, and disposed to spill each others' blood. Life was taken away by surprise; and, for the safety of the subjects, the legislature interposed their authority to prevent the growing evil. The offence of stabbing, at common law, upon a sudden provocation, was manslaughter, and like killing in any other manner, as with clubs, if under such circumstances as to make it manslaughter. The mode of killing is not material; if done by strangling, poisoning or shooting, the guilt is the same. Hawkins speaking of the statute of James, page 116, says, "It is generally holden, that this statute is but *declaratory* of the common law. That there is no need to lay the conclusion of the indictment *contra formam statuti*, because the statute *makes no new offence*, but only takes away the privilege of the clergy from an old one, and leaves it to the judgment of the common law."

Poisoning will be found to be murder at common law, and so declared by our act concerning murder, 1st section. Here the legislature have made no alteration; therefore they could intend no more than affirming the common law, and so far as the adjudications go in construing the act of James, they universally decide it to be declaratory only. It is a sound rule of law, that when the common law and the statute *differ*, the former gives way to the latter. If the statute alters the law which I have applied, as governing and deciding the case of Arnold, then the act must operate. This variation is what I shall attempt to discover. So far, the examination of this act, relates merely to the enactive part. The provisional cases in this act are next in order. For clearness and perspicuity, it is preferable to take each of those cases, and discuss them separately:—"But this shall not extend to any person or persons, who shall kill any person or persons in his, her or their own *defence*, or by *misfortune*, or in any other manner than as aforesaid." The remark which Kelyng makes upon this statute, page 28, may here properly be introduced. "That although if an officer or other person kill another in preserving the peace, or a parent, master or schoolmaster, kills his child, servant or scholar in chastising or correcting him, this shall be said to be *per infortunium*. Yet see Stat. 1 Jas. C. 8, for stabbing. there at the end of it, there is a proviso, that the statute shall not extend to any person who shall kill in keeping and preserving the peace, so as the manslaughter be not committed wilfully and of purpose, under pretext of keeping the peace; nor to a master or parent in chastising his child or servant, besides his or their intent and purpose. So that those *circumstances* are inquirable in those cases." The question may here be put—what circumstances are to be enquired into in those cases? If it is pretended that the killing was in self defence, the party justifying the killing, must shew such circumstances to the court, as it may appear that it was in self-defence. A person has a right, by the common law, to defend himself from the attacks and assaults of others; and if he kills in such defence, he is not guilty of murder, but homicide *se defendendo*, and by our act, shall loose nothing, but be entirely discharged. If the person defending himself, was indicted for murder, would he be tried by rules of the common law, or by the statute? would you, in the indictment, lay two counts, one upon the statute, and the other at common law; or would the act have any thing more to do with the offender than if, upon the trial, it was found, that the killing was in self-defence, but to acquit and discharge

him entirely ? To me, the conclusion is irresistable, that he could be tried by the rules of the common law only. If the killing was "by misfortune," the act against stabbing does not extend to it. That act declares expressly the killing to be done with malice aforethought, and adjudges it to be wilful murder of malice prepense. Therefore, this act shall not extend to those cases which rest upon *implied malice* only, and that malice to be inferred or presumed from the circumstances attending the transaction. As if a person shooting at a mark and undesignedly kills a man, it is homicide *per infortunium*, for the act is lawful and the effect merely accidental. The killing in such a manner shall not be adjudged done with malice prepense, but the circumstances are to be enquired into, and those circumstances are to decide the innocence or guilt of the accused. The master, in correcting his servant, must use instruments fit for correction; should he by accident kill him, the fact of misfortune is to be proved. The statute shall not extend to "any person or persons, in keeping or preser-"ving the peace, shall chance to kill any person or "persons, so as such killing be not done wittingly, "willingly and of purpose, under pretext and "colour of keeping the peace." Suppose a public officer should kill one in an attempt to preserve the peace, what circumstances must he shew to justify the killing? By what laws are you to try him? none but the common law. He must shew that he is an officer, and was acting in the execution of such office. That the person killed, resisted the authority of the people. These facts, if made out, make the officer guilty of *justifiable homicide*. But, to reverse the case: If there was no occasion to make use of that authority which a public officer is cloathed with; as if there is no riot committed, the peace not disturbed, or say, there is a slight disturbance, and by the *moderate* use of his authority, the peace could be secured; but the officer wittingly, willingly and of purpose, under pretext and colour of keeping the peace, kill one, from the immoderate use of his authority—the case would be murder; although an officer has by law an authority to correct the disturbers of the peace, yet this right may be abused and become unlawful. As if, from circumstances it should appear, that there was no cause, no provocation, or if any, very slight, and he committed a transgression of that authority, from which death ensued, the law would presume it to be done, "wittingly, willingly and under pretence of of keeping the peace" But should circumstances manifestly exhibit a cause for the interposition of the authority of the officer, and death happen, it would be *justifiable homicide*. These provisional cases in the act that have been already examined, will be readily seen, have received no alteration, and that there is yet in our law cases in which malice may be presumed to convict of murder. There are a number of cases in this act excepted, and which come under the general expression, "or in any other manner than as aforesaid." To instance a case that would be included within this general provision, where the prisoner died by reason of duresse and hard usage by the goaler, it was held murder in the goaler. It is not express malice that makes the goaler guilty of murder, but malice implied or presumed, arising from the wickedness and depravity of the goaler's disposition. The last case excepted in this act is this, nor shall the statute extend "to "any person or persons, who in chastising or cor-"recting his, her or their child, or servant, shall "contrary to his, her or their *intent* and *purpose*, "chance to kill such child or servant." Upon this part of the statute, the advocates for Arnold have attempted to find refuge. Its sound construction is all that I shall attempt to discover. Had the words "contrary to his, her or their intent and purpose," been omitted, in the act, how would it then be construed? These words seem to create the only embarrassment if any. If a parent in correcting his child, should, by a moderate blow, occasion the child to fall upon an ax or a sword, by which it was killed, this would be accidental homicide in the parent. It would evidently appear that it was "contrary to his *intent* and *purpose*" that the child was killed. Had he taken the ax or sword, and made use of it as an instrument for correction, and by that put an end to the child's life, it would be murder. The *instrument* of correction which occasioned the death of the child, would do away the idea that it was not his "*intent* and *purpose*" to kill; for the law presumes and implies malice from the *instrument* used in chastising; that no man would correct his child with such a weapon, unless possessed of a *wicked, depraved* and *malignant* spirit. Arnold did not kill the child by accident; but the killing was unlawful from the manner in which the child was corrected, and the quantity of punishment used. Had the infant died while under the lash of correction, the law would judge it murder, and infer malice from the barbarity of the act. That this may prevent parents from correcting their children, when they are deserving it, cannot be relied upon as forming an objection to convict Arnold of murder. The helpless and innocent must be protected, and by this means parents will be cautious in the exercise of their authority. Children frequently deserve chastisement; but their lives can never be at the disposal of their parents. Arnold, I pronounce to be a murderer, and if an earthly tribunal does not administer that justice which he deserves, and faithfully execute those laws which secure our persons and property; there is a place where he will be judged for this wicked deed, and by that judgment depends his forgivness or everlasting misery.

COMMENTATOR.

HUDSON, *March 7th*, 1806.

Hudson, *March* 18.

Be it our weekly task,
To note the passing tidings of the times.

Naval Victory.

The following account of a late *warm* naval engagement, in the West-Indies, is taken from the Evening Post of the 8th instant:—

Capture of the Brest Squadron.

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Wreath.

EXTRACT.

[The following *caustic application* to the tender flesh of quacks, is extracted from a long production in the Dartmouth Gazette :—]

THE QUACK DOCTOR.

MOREOVER, again—simple honest TIM SKIP
Had a little sly wart on the brim of his lip,
Which he candidly own'd he had thoughts of dismissing—
As it stood in the way, both in eating and kissing;
To the fountain he goes for a surgical answer,
And was told that said wart was a horrible cancer!
"And (as true as you sprung from the race of the *Skippers*)
"You must try my infallible caustic and nippers!
"For if you delay it much longer—I knows,
"It will *cartingly* end in a wapping great nose!"
Poor *Timothy*, therefore, was dolefully frighted,
(As he stood at the bar of destruction indicted,)
While a plaister of potash was pompously mixt,
And on the wart's forehead most artfully fixt
For a day and a half—when the famous *Bon Coots*
Drew it out, with its hundred invisible roots!
Which by-standing grannies, with voices in tune,
All vow'd they could see, plain as man in the moon!
Thus trumpet-tongued Gossips, with clarion shrill,
Declare Doctor *Coots* beats the nation for skill;
Hence—in cancer destruction, he's call'd on to ride
More than all the quack doctors in ——— beside.

Miscellany.

FROM A LONDON PAPER.

GENERAL MIRANDA,

WAS born in Mexico; for his colleague, Dumourier, commits an error when he terms him a Peruvian.* Notwithstanding the jealousy with which the Spaniards were accustomed to treat the native Americans, this gentleman found means to obtain a colonel's commission, and was employed by the governor of Guatimala in several confidential situations. He is thought very early in life to have entertained the generous resolution of emancipating his countrymen from thraldom; and to this is attributed his precipitate retreat from New Spain.

Since that time, he has been almost literally a *wanderer*. In the course of his travels, he has visited every part of Europe, and resided more than once in England. Being possessed of taste, learning and a classical style, he was enabled to collect and narrate a variety of anecdotes, and observations relative to the manners, policy, laws, learning, and above all the military establishments of every nation.

No sooner had the French revolution taken place and a foreign war become inevitable, than he repaired to Paris from St. Petersburg, where he was in great favor with the empress,* who endeavored but in vain, to attach him to her person and service.—By means of Petion, he obtained the rank of major-general, and very ably and effectually seconded the efforts of Dumourier at Belgium. Being an excellent engineer, he displayed great military science in the art of attack; in short, he soon became respected in the army, and popular in the capital.

When the hero of Jemappe penetrated into Holland, he was appointed to the command of the troops destined to attack Maestricht: the attempt proved abortive—but, as this evidently proceeded from the negligence of the general at the head of the *covering* army, his laurels were not blighted by the event.

The conduct of Dumourier as soon as he began to experience a reverse of fortune, became suspicious; and his frequent conferences with the Austrian general, which ended at length in his entire defection, rendered all the patriots in the army jealous of him. Miranda instantly communicated his fears to his friend Petion, at that time a member of the committee of public safety, and orders were soon after issued to arrest the commander in chief. This circumstance saved the life of Miranda†—for Dumourier had attributed the loss of the battle of Nerwinden to him, and still blames him in his history. To this the other has made a reply, equally able and animated.

No sooner had the party of Gironde been overwhelmed by the energies of the Mountain, than Miranda was imprisoned.—He was liberated at the general *gaol delivery* on the execution of Robespierre; took an active part against the sections of Paris, during the last insurrection, and was once more put under arrest by order of the directory.

Since that period he has been enjoined to quit France, under pretence of being a *foreigner*. This ungrateful return for his services was perhaps suggested at the instance of the court of Madrid, which has long viewed him with a jealous eye. If so, it was baffled in the first instance; for Miranda refused to obey the order; and claiming the rights of French *citizenship*, appealed to the legislature, in consequence of which the executive was obliged to desist for a time. Its power rather than its justice, however, prevailed at length, and he was driven into exile.

Gen. Miranda at present resides in this country; but like the other emigrants, (Pichegru, de Puisaye, and a few more excepted) he receives no countenance from government, being tolerated rather than cherished.

* Miranda was introduced at Cherson to the late empress, by prince Potemkin, who presented him at the same time to the emperor Joseph, and he was most graciously received by both.

The court of Spain afterwards claimed him as a subject, but he was protected by Catharine, who refused to deliver him up.

Her Imperial majesty, indeed, always treated him with great respect, and offered to confer many favors on him; however at the commencement of the French revolution, he left Saint Petersburg, with a decided intention to serve in the French armies, a circumstance that gave great offence to the haughty sovereign whom he had abandoned.

† He was fortunate enough to be acquitted, after a trial of five days before the revolutionary tribunal of Paris.

ECHO.

Questions and answers.—In what country was it that several of the French bulletins very much exaggerated their successes; and their boasting was so great that subsequent accounts have proved it a lie? *Echo*, Italy.

Is it not probable there is an emperor, who after being hard pushed and obliged to give up his hereditary estates, when seconded by the Prussians and his other allies, may not wish to prove himself as great an emperor as in France is? *Echo*, Francis.

The French ask, what is the name of the Russian general whose troops were so fortunate as to cut us so? *Echo*, Kutulow.

Who was the general whose whole corps was destroyed as if they were of no more force or resistance than if they were made, like their hats, of mere felt? *Echo*, Meerfeldt.

The inhabitants of Vienna ask impatiently, who is the French general whose astonishing success in the capture of our city has given him, we fear, a permanent birth here? *Echo*, Berthier.

Who is he whose infamous conduct at Jaffa, and whose disregard of all laws human and divine bespeak him to be a fit character for commanding such destructive and exterminating troops as did the angel of the bottomless pit, called in the Greek tongue Apollyon? *Echo*, Napoleon.

[*Wal. Museum.*]

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